
**COMMISSION MEETING
THURSDAY, OCTOBER 12, 2000
DRAFT MINUTES**

Chair McLaughlin called the meeting to order at 1:30 p.m., at the DoubleTree Guest Suites in Seattle. Chair McLaughlin announced that Commissioner Parker has asked that the nonprofit issue be held over until Friday's agenda when he will be in attendance. The Commissioners concurred. Chair McLaughlin introduced the following attendees:

MEMBERS PRESENT:

**LIZ McLAUGHLIN, CHAIRPERSON;
COMMISSIONER and VICE CHAIR, GEORGE ORR;
COMMISSIONER CURTIS LUDWIG;
COMMISSIONER MARSHALL FORREST; and,
EX OFFICIO MEMBER, SENATOR MARGARITA PRENTICE; and,
EX OFFICIO MEMBER, SENATOR SHIRLEY WINSLEY**

OTHERS PRESENT:

**BEN BISHOP, Executive Director;
ROBERT BERG, Deputy Director, Operations;
ED FLEISHER, Deputy Director, Policy & Government Affairs;
CALLY CASS-HEALY, Assistant Director, Field Operations;
DERRY FRIES, Assistant Director, Licensing Operations;
AMY PATJENS, Manager, Communications & Legal Dept.;
JERRY ACKERMAN, Assistant Attorney General; and
SHIRLEY CORBETT, Executive Assistant**

1. NEW LICENSES, CHANGES, AND TRIBAL CERTIFICATIONS:

Commissioner Ludwig made a motion seconded by Commissioner Forrest to approve all the applications on pages 1-19 of the agenda packet. Vote taken; the motion carried with four aye votes.

2. REVIEW OF FRIDAY'S AGENDA:

Amy Patjens, Manager, Communications & Legal Department, announced that Spokane Athletic Roundtable, a Group IV Qualification has been added to Thursday's agenda. This item was held over from last month. Ms. Patjens announced the Grove Tavern, a Phase II review, would not be going forward this month.

She noted there are several rules up for final action on Friday's Agenda. The issue of charitable nonprofit organizations being able to own a commercial establishment will be up for final action; it will be moved to the last item of business on the agenda. The Surprise Punch Board and Pull-tab rule is up for final action. Staff has asked that the Reporting Changes in Management rule be held over until next month. The industry had some questions at the last commission meeting about whether staff expected notification every time they hired a new floor supervisor. The answer is no, and staff has worked on the language and believes the rule could be made clearer. Holding the issue over until next month would not change the effective date. The Promotional Contest of Chance and Credit

Union Raffle Rules is up for final action. There are 14 rules related to the Bingo Net Return Task Force up for discussion, they were filed after the last meeting. There is a new rule on New Marketing Schemes for Pull-tabs and House Rules for Bingo up for discussion. Kegler's has withdrawn their petition for a rule change about the logo poker cards. There is also a proposed rule change by Lee Taylor regarding player-supported jackpots relating to what happens in the event the player-supported jackpot ends. Mr. Taylor submitted a petition in July, which he thought staff had misunderstood, and he has therefore submitted a new petition. Staff still isn't in full support, but feel there is more room to work with Mr. Taylor on this petition.

Commissioner Forrest referred to the study session discussion relating to the net return issue. He said he asked Ms. Winslow to develop a draft proposal gearing the license almost totally to a percentage of gross and possibly some limitation on payouts. If Ms. Winslow is successful in getting it prepared, it will be available Friday morning.

3. **MANUFACTURER REVIEW:**

Chipco International, Maine:

Derry Fries, Assistant Director, reported JOM, Inc., doing business as Chipco International Ltd., has applied for a Class B Manufacturer license. The corporate office and manufacturing plant is located in Raymond, Maine. There are several owners of its 1396 shares of outstanding stock as listed in the Manufacturers' Investigative Summary. Officers are: John Kendall, President, Thomas Kendall, Executive Vice President and Director; Richard Kendall Chairman of the Board, and William Poole, G. Charles Shumway II, General Counsel. Personal and criminal background checks were completed on all substantial interest holders and their spouses. There was no disqualifying information found. A review and analysis of both personal and corporate finances or records and other documents did not reveal any disqualifying information. Staff conducted an on-site investigation and inspection of the manufacturing facility located in Maine. There were no indications of hidden ownership's or outside influence and no exceptions were noted. Chipco is currently licensed in four states and in nine tribal agencies in the United States, and they hold licenses in two Canadian jurisdictions. Staff contacted the various jurisdictions and they did not reveal any disqualifying information. However, on December 20, 1999, the Louisiana Indian Gaming Division informed Chipco their state certification had been revoked. Further discussions revealed that Chipco has a current license in Louisiana for riverboats. Louisiana has four divisions that conduct gambling activities: the riverboats, a land-based division, video-poker division, and the tribal gaming division. The tribal gaming division issues tribal certification for vending and tribal gaming operations. A staff review of pertinent documents from the state of Louisiana showed that the revocation was due to a failure to disclose tax liens and certain information on loans received by Chipco. On evaluation, staff concluded these violations did not present a danger to the public and did not demonstrate a disregard for the law to preclude licensure in the state of Washington. Chipco is fully aware of their responsibility to disclose information of this nature in accordance with Commission rules. When evaluating the source of capital, the nature of Chipco's involvement in the gambling activities in the state of Washington did not require financing of any operations. Our state will simply be an additional market for Chipco.

Based on the review of the application and financial documents, no items were noted that would preclude Chipco from qualifying for a gambling license in Washington State. Based on the investigation, staff recommended licensure of JOM, Inc., d/b/a Chipco International Ltd., as a Class B Manufacturer. No representatives were present.

Chair McLaughlin asked if they had ever applied for another license in Washington. **Mr. Fries** affirmed they had applied for a special sales permit, which is under the purview of the director to issue. Chipco is presently operating under that permit. **Commissioner Ludwig** asked if they ultimately supplied the information they had failed to supply in Louisiana. Mr. Fries said they did not because they chose not to operate in that particular market. They do hold another license in that state.

Commissioner Forrest made a motion seconded by **Commissioner Ludwig** to approve licensure of JOM, Inc., d/b/a Chipco International Ltd., as a Class B Manufacturer. *Vote taken; motion carried with four votes.*

4. **GROUP IV – QUALIFICATION REVIEW:**

Spokane Athletic Round Table, Spokane:

Bob Berg, Deputy Director reported that at the September 2000, meeting, staff was directed to expand their investigation and report back concerning issues raised during the qualification review of this organization to be a bona fide charitable or nonprofit activity in the state of Washington. Staff initiated a limited program review and assigned special agents to conduct an in-depth review of the materials that Spokane Athletic Round Table had originally filed. Staff also conducted additional inquiries regarding what caused the market increase in supporting services from 1998 to 1999; specifically, why did support services increase from approximately \$40,000 in '98 to \$61,000 in 1999? There are two answers. First, the administrative wages were increased by approximately \$4,000 and secondly, the other increases of approximately \$17,000 were caused by changes in the allocation of how those costs were allocated within the charitable organization. There was a situation where certain costs had been previously allowed that were not allowed in the subsequent reviews. The true increase in terms of dollars was about \$4,000 in administrative wages.

The second question that the Commission asked at the Wenatchee meeting related to what other gambling activities the organization had that would produce a \$31,000 loss for 1998 in the category called "Other Gambling Net Income." That loss is attributed directly to punch board and pull-tab gross receipts, which decreased by approximately \$110,000. After deducting the prizes paid, the net receipts declined by nearly that identical \$31,000 figure.

The final question the Commission asked staff to gather more information about dealt with whether the Spokane Athletic Roundtable qualified as a bona fide charitable nonprofit organization for the purposes of conducting authorized gambling activities in the state of Washington? This question was posed again because staff's initial presentation indicated that supporting services – the percentage allocated for that – exceeded the 20 percent rules. Supporting services cannot be more than 35 percent, except if the majority of the funding is passed through grants, then the limitation falls to 20 percent. In this case it was over 50 percent. Staff reviewed that again and while their program review resulted in some minor changes in costing out/allocating things, staff could not get to the point where their support services were 20 percent or less. Their supporting services still far exceeded the amount authorized by rule. Staff recommends the Commission grant the Spokane Athletic Roundtable a conditional or temporary certification as a bona fide organization authorized to conduct gambling activities while staff continues to work with that organization. If a resolution cannot be found, in the alternative, administrative action would be taken, which would find its way through the administrative process. This is consistent with WAC 230-04-264.

Commissioner Forrest asked for a clarification of WAC 230-04-264(d)(iii). **Mr. Berg** said the WAC defines the options available when the Commission hears qualification reviews. The options are a) to grant them and say they are a bona fide, charitable, nonprofit organization; b) it can be returned to staff – which is what the Commission did last month, asking for more information; and c) the Commission can request more information from the licensee. The rule does not allow the Commission to arbitrarily deny the organization the opportunity, however, there is an administrative remedy if the agency chooses to take action against the licensee.

Commissioner Forrest said that unless staff is (by the next meeting) prepared to recommend some changes and defines compliance – that the notice go out forthwith. Speaking for himself, he said he would be inclined to initiate proceedings now because the organization has had 30 days and they haven't persuaded staff and they haven't written any letters with their proposed changes. **Mr. Berg** noted that when the documents were faxed to the organization they indicated that unless it was critical that they be present, that they would not be present.

Commissioner Ludwig made a motion seconded by **Commissioner Forrest** to move the matter forward to Friday's agenda to give the organizational representatives an opportunity to attend the meeting and respond to questions.

Director Bishop affirmed that the process is going forward at this point in time, but staff is unable to bring the facts before the Commission. Staff is asking for a temporary certification so they can continue through the process. The normal process is to give the organization written notice of their findings and the organization would be given a

chance to respond. Typically with nonprofits, if things can be corrected, they would work through them. If not, it would go through the hearing process with a recommendation.

Commissioner Forrest addressed what would happen if this matter was not continued and verified a process is in place to notify them, and unless something's done, eventually there'll be a hearing. Commissioner Forrest wasn't sure what would be accomplished by granting temporary approval. Why should the Commission approve it -- if they can't do anything about it? **Director Bishop** affirmed this is a legal question. By the Commission's own rules, this is the process. The basis for this rule is that annually, a charitable or nonprofit organization must demonstrate they've made significant progress towards their stated purpose. The current process was established to demonstrate significant progress. When someone doesn't demonstrate significant progress, the effect has been that staff asks for temporary approval while they go through the administrative process.

Mr. Berg explained the justification for a temporary certification; the problem may be corrected and staff could come back and inform the Commission of such, and would recommend the organization be authorized to conduct gambling activities in the state of Washington. Or, in the alternative, some administrative action would be filed, which may find its way to the Commission in its appellate capacity. **Commissioner Forrest** noted that if temporary approval was not granted, the organization would continue to operate and the administrative process would go forward. Mr. Berg agreed. Commissioner Forrest asked why the Commission should give temporary approval -- they performed poorly the last time and today's performance is even worse because they did not make any attempt to say they would be making any effort to cure the problem, or ask for consideration. Commissioner Forrest said he is against temporary approval.

Commissioner Orr supported holding off until Friday. **Chair McLaughlin** called for the vote. *Vote taken, motion passed with three ayes, Commissioner Forrest cast a nay vote.*

5. **GROUP V - QUALIFICATION REVIEW:**
Big Brothers Big Sisters of King County, Kirkland:

Monty Harmon, Financial Investigations Unit, reported this organization was formed in 1957 and is an agency dedicated to developing friendships between adult volunteers and children from single parent families. Big Brothers of King County merged with Big Sisters in King County in January of 1999, and expanded services to include Pierce County. They have a 25-member board, a full-time executive director, and 45 employees. Their staff recruits and carefully screens volunteers to match with girls and boys to share one-to-one experiences and to have modeled to them a positive self-image. Currently, the organization provides traditional one-to-one matches as well as school-based matches. The organization served 1,080 matches in 1999 and total of 2,463 clients.

The organization met their net return percentage. More than 60 percent of the organization's gambling proceeds were spent towards program services. Supporting Services were in compliance with less than the 35 percent of the functional expenses. They did not have excessive reserves, and as of July 31st there were no pending administrative charges against this organization. Staff noted during the review that there was an increase of \$287,000 in non-gambling funds due to the combination with Big Sisters. That money is not reflected in the prior year. Staff recommends Big Brothers Big Sisters of King County be approved as a charitable organization authorized to conduct gambling activities in the state of Washington.

Chair McLaughlin asked why this organization was able to meet their net returns when so few do. **Mr. Steve Strand**, primary Bingo Manager for Big Brothers Big Sisters of King County, responded that the numbers are quite different this year as opposed to 1999. The numbers are significantly different for the year 2000 than they were in 1999, and there are a number of factors which have contributed to the decline. He affirmed attendance is down and his organization is experiencing competition from the "X" Machines.

Commissioner Ludwig made a motion seconded by **Commissioner Orr** to approve Big Brothers Big Sisters of

King County as a charitable organization and they be authorized to conduct gambling activities in the state of Washington.

Senator Winsley asked what other gambling net income this organization has other than pull-tabs. Mr. Strand said there are several other small sources -- some are in the form of Crane Amusement Games, and they also have retail sales which includes the snack bar and hall rental.

Chair McLaughlin called for public testimony, there was none, and she closed the public hearing. *Vote taken; the motion carried with four aye votes.*

Big Brothers/Big Sisters of Spokane County, Spokane:

Monty Harmon, Program Manager, noted this organization was formed in 1965. Their mission is to provide guidance, aid, and championship to children from single-parent homes. They have 1,218 active members, a board of nine members, a full-time executive director, and 18 employees. The 592 volunteers provided 55,000 hours of service. The organization matches carefully screened, trained volunteers on a one-to-one basis with single-parent children ages 7 to 14. The traditional service provided by the organization has volunteers commit to a minimum of one year and attempts to see their little brother or sister weekly for three to four hours. The school-based monitoring program provides a one-to-one mentoring where volunteers will spend at least one hour a week at the school. In 1999, casework staff initiated 133 new mentoring relationships and the total of active matches increased from 217 to 248. They served 350 mentoring relationships. The organization also provides camper scholarships up to \$100 per child in matching money.

The organization has been approved for participation in the current net moratorium program, which requires organizations to operate at 11 percent net return. The organization achieved 11.2 percent. More than 60 percent of the organization's gambling proceeds were spent to provide program services and support services. The support services were less than 35 percent of functional expenses. The organization did not have any excess reserves. The net non-gambling revenues increased \$250,000 -- part of that had to do with a change in philosophy on raising funds. In all, their fundraising efforts outside of gambling increased \$80,000 during the year. The organization experienced some snack bar losses during the year. They also found a vacant building that they have now rented and that has caused an increase in their support services.

Based on staff's analysis of the financial statements, narrative and supplemental information provided with their application, the organization has made progress toward accomplishing their stated purposes. Nothing came to the agency's attention that would indicate Big Brothers/Big Sisters of Spokane County is not qualified as a bona fide nonprofit organization for the purpose of conducting authorized gambling activities. Staff recommended that Big Brothers/Big Sisters of Spokane County be approved as a charitable organization and be authorized to conduct gambling activities in the state of Washington.

Don Kaufman, General Managing Director affirmed that meeting the net return requirement was a struggle. **Commissioner Ludwig** addressed the expense analysis and asked what was being depreciated. Mr. Kaufman responded that the organization owns the building they operate Bingo from, and it is equipment and building depreciation.

Senator Winsley asked what the organization gave to charity last year. **Mr. Kaufman** said their net return went from \$690,000 in 1994 to \$329,000 in 1999. However, they turned over \$400,000 from their Bingo operation to their program services last year that helped serve the kids from Spokane County.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** that Big Brothers/Big Sisters of Spokane County be approved as a charitable organization and authorized to conduct gambling activities in the state of Washington.

Chair McLaughlin opened the meeting for public comment and there was none. She asked for other discussion from Commissioners or staff. **Commissioner Orr** noted that unfortunately people who gamble do not gamble to help the charitable organization, they're gambling to help themselves by hopefully winning. They're having fun and they will gamble where the "stuff" is the neatest -- he pointed out that Big Brothers/Big Sisters of Spokane has a nice facility and he wished them the best. Vote taken; motion passed with four votes.

Chair McLaughlin recessed the meeting at 2:25 p.m. and reconvened the meeting at 2:45 p.m.

6. HOUSE BANKED CARD ROOM APPROVALS:

Café Arizona, Federal Way:

Derry Fries, Assistant Director, Licensing, reported this organization has applied for a license to operate ten tables of house-banked card games. American Best Food, Inc. was formed as a privately held Washington corporation in November of 1993. The corporation has 600 shares of outstanding stock all owned by the Corporate President, Mr. Seo-Jeong. The corporation presently holds a Class E public card room license; however, the card room license and the card room is not in operation at this time. They haven't been in operation for approximately one year. Special Agents conducted a criminal and personal background investigation of all substantial interest holders, and initiated and completed a financial investigation of both the corporate and personal stockholder finances. No disqualifying information was found. An onsite pre-operational review and evaluation in accordance with the rules of the Commission was conducted on September 26, 2000. The applicant was found to be in compliance.

The agency has received correspondence from the city of Federal Way opposing the issuance of this license. The information contained in correspondence became part of the pre-licensing investigation. There are two letters from the city dated August 31, 2000 and September 22, 2000 respectively. In addition, there's a letter from Mr. Kenneth Kagan, the attorney for Cafe Arizona. Based on the results of the licensing investigation and the pre-operational review and evaluation, staff recommended American Best Food, Inc. d/b/a/ Café Arizona, be licensed as a house-banked public card room to operate up to ten tables.

Bob Tull, Attorney, reported that he has been assisting with some of the gambling licensing matters for Cafe Arizona. He noted that staff just indicated they took all the correspondence and the issues raised into consideration, and has still made this positive recommendation. He asked if there were any questions.

Chair McLaughlin asked if Cafe Arizona was denied a license for a house-banked card room, would they use the card room license they now have. **Mr. Tull** said they very likely would need to do so. They have spent in excess of \$250,000 to remodel, to install appropriate surveillance equipment, to build a cage and all the things necessary to operate a first-rate card room. That investment couldn't be abandoned even on a practical level. **Mr. Tull** said the idea is to rapidly make a transition from a music and dance-oriented nightclub to a card room and restaurant emphasis business. Eventually, the dance floors would cut down to almost nothing; they've already begun a programming change with respect to music. The demographics of the gambling audience are substantially different than the demographics of a young person's nightclub audience. **Mr. Tull** introduced John Chung. **Mr. Chung** thanked staff and the commissioners for their support provided over the last six months. He introduced the president of the corporation, **Mr. Seo-Jeong** and his wife. **Chair McLaughlin** opened the discussion for public comment and there was none.

Commissioner Orr made a motion seconded by **Commissioner Forrest** to approve America Best Food, Inc., d/b/a Café Arizona, to be licensed as a house-banked public card room to operate up to ten tables. *Vote taken; motion passed with four aye votes.*

7. HOUSE-BANKED CARD ROOM PHASE II REVIEWS:

The Grove Tavern, Everett:

(Removed from the Agenda)

Charlie Mac's Casino, Sea Tac:

Cally Cass-Healy, Assistant Director, reported this is a commercial restaurant, lounge and card room located in SeaTac, and is owned by Club Zeus Incorporated and Life's a Gamble, LLC. Club Zeus Corporation owns 51 percent and the sole shareholders are Rodney and Debra Murray, husband and wife. Life's A Gamble, LLC holds 49 percent of the business currently. Charlie Mac's Casino opened with 15 house-banked tables on February 10, 2000. During the review, the licensee was approved for 15 tables and opened with seven tables including two Blackjack, two Spanish 21, two Fortune Pai Gow and one Pai Gow.

A comprehensive investigation was performed by special agents including a review and observation of gaming operations, a review of closed circuit television systems, a review of the cashier's cage, a review of the gaming and organizational records, a review of the account room controls, and a review of the key controls. In addition, SeaTac Police Department was contacted and it was found they had responded to nine calls in a six-month period mainly with incidents occurring in the parking lot. However, the licensees said they plan to remodel soon and will include additional lighting and four surveillance cameras in the parking lot to deal with this problem. The City of SeaTac verified the licensee was current with the required local gambling taxes.

Based on staff review, approval for Phase II wagering limits are recommended. All violations noted during the review were corrected. It was noted that the licensee will be closing their operation for remodeling in the near future and that they intend to reopen with 15 tables. Commission staff will perform a follow-up inspection after the licensee reopens to verify the licensee remains in full compliance -- this is consistent with WAC 230-40-803(6).

Commissioner Ludwig made a motion seconded by **Commissioner Forest** to approve Charlie Mac's house-banked card room to advance to Phase II wagering limits.

Chair McLaughlin asked if there were representatives present and Jerry Kingen and Scott Switzer introduced themselves.

Commissioner Ludwig asked if the establishment had been generally profitable at the Phase I level. **Mr. Kingen** affirmed, and said they are excited about being in the business and they are looking forward to having a great relationship with the Commission. He believed they would do the industry proud -- they have some experience in the entertainment and the restaurant business. Mr. Kingen and Mr. Switzer appreciated the Commission's support.

Chair McLaughlin called for public testimony and there was none and none, Chair McLaughlin called for the vote. *Vote taken; motion passed with four aye votes.*

8. **DEFAULT HEARING:**
Sergey Braginskiy, Card Room Employee Revocation

Ms. Patjens noted that staff is asking that a default order be entered against Mr. Braginskiy for cheating while dealing cards while working at Goldie's in Shoreline. Ms. Patjens provided a brief detailing of the incident. Goldie's subsequently terminated Mr. Braginskiy. She explained that card room employees can work for more than one card room, and Kenmore Lanes found that Mr. Braginskiy had also been involved in cheating incidents at their establishment. Mr. Braginskiy is no longer working at Kenmore Lanes, but he is working at Parker's. The director brought charges against Mr. Braginskiy. The charges were sent by certified mail. Commission staff have not received any response from Mr. Braginskiy. Staff also left telephone messages asking him to call about the charges. Staff has never heard from him, and by not responding to the charges, Mr. Braginskiy has waived his right to any type of a hearing. Staff is asking that a default order is entered and that Mr. Braginskiy's license be revoked.

Commissioner Ludwig made a motion seconded by **Commissioner Orr** to enter a default order revoking the licensee's license. *Vote taken; motion passed with four aye votes.*

PETITION FOR REVIEW:

Larry Muchow, The Golden Nugget

Steven Reinmuth, Attorney General's Office provided background information in the matter regarding the revocation of Mr. Muchow's license to conduct gambling activities. Mr. Muchow failed to appear for the review.

Commissioner Forrest made a motion seconded by **Commissioner Orr** to adopt the Administrative Law Judge's findings and conclusions and enter an order. *Vote taken; the motion passed with four aye votes.*

Dixie Schule, Card Room Employee, Seattle

This review was scheduled for 3:30 p.m., the Commission elected to move on to other business and come back to this item at 3:30 p.m.

10. OTHER BUSINESS/GENERAL DISCUSSION/COMMENTS FROM THE PUBLIC:

Chair McLaughlin opened the meeting for general discussion and comments from the public. **Bob Brennan**, Royal Casino, addressed the Braginskiy issue, and asked whether the three employers were notified, because as an employer, his establishment has had employees who have done the same thing and the agency notified his establishment so they could discuss this with the employee. **Ms. Patjens** said that as a matter of routine, when charges are brought against a card room employee, the agency sends a notice to any place where that person is currently working.

Bob Parker, General Manager of Parker's Casino said he was not informed about this, but he received a letter that the issue was under investigation, but no reason why or what it was about. He said he was not informed this would be happening today and he did not know if the man is guilty or not; however, he was not informed to terminate this employee and the employee is scheduled to work tonight. **Ms. Patjens** said the employer is not notified that they need to terminate the person. She referred to a letter dated August 16th, which went to Dennis Edison of Parker's Sports Bar, providing a courtesy copy of the administrative charges. This notice is for the employer's records, no action is required, but if there are questions, they are advised to contact the agency. Mr. Parker noted that when an employee is accused of stealing, as a casino manager, he would like to be made aware of the investigation.

Commissioner Ludwig asked Mr. Parker if the employee had informed him he had a case pending. Mr. Parker said no -- he came in, applied for a job as a dealer, passed the audition and was hired. There was no indication of any problems with any other employer whatsoever. Mr. Parker said the individual the agency addressed the letter to had not worked at the casino for over a year, and that he has been at Parker's for almost six months as general manager.

Chair McLaughlin affirmed that perhaps there was a communication problem, but in all fairness to Commission staff, they followed the procedures. She noted Mr. Parker acknowledged the letter he received said something was under investigation and that perhaps he should have taken more responsibility to call the agency and find out. Mr. Parker said he called and spoke to his agent, who said she's not allowed to comment on charges. **Ms. Patjens** believed this discussion relates to two different letters. She clarified operators routinely get information if the agency is doing a background investigation and if something is found in a person's criminal history, that they should not be allowing the subject in question to work. She explained the letter she is referring to is a letter that went out with a copy of the actual charges attached. **Chair McLaughlin** verified that the owner of Goldie's made the original charge, and that the agency must have been informed then that this man moved to Parker's. **Ms. Patjens** affirmed. **Chair McLaughlin** noted the letter went out to whomever at Parker's -- whether it got lost in the shuffle -- she didn't think the agency was responsible for that. **Mr. Brennan** said it should have been a certified letter to the owner. Ms. Patjens said the agency could send the letter by certified mail, but there's no legal requirement that they do that, and she noted the agency does this as a courtesy because they do want owners to be informed about what is going on with their employees. Chair McLaughlin verified the owner would receive a copy of the final order and Ms. Patjens affirmed. **Mr. Parker** noted the employee is scheduled to work tonight, and if the order revoking his letter is effective today, he asked if he should fire the employee? **Chair McLaughlin** said that because he is aware his license has been revoked, it would be his decision on what to do.

Commissioner Ludwig supported Mr. Brennan's suggestion to send the mail to the owner as registered mail, and he expressed concern about why the letter was not received by the appropriate person. **Mr. Parker** said he started on

May 17th and the application for a transfer of the management was submitted the first of June. **Ms. Patjens** affirmed her letter was dated August 16th and advised that there may have been a chance the computer records were not updated by the time her letter was sent. **Director Bishop** emphasized the notification letters are provided as a courtesy only, because at that point in time, the person has only been charged, and has not been determined to be guilty. He stressed the agency would be out of line to call the owner of a place and say "We've charged a person; you fire him." He clarified it is not the agency's responsibility to send these types of letters, but we do, and to begin sending them by certified mail would build in more bureaucracy and more expenses.

Mr. Parker again asked if he should fire the employee if he comes to work, now that he knows his license has been revoked. **Director Bishop** responded that it was his choice -- the agency is only required to serve the orders. **Mr. Brennan** believed there is a fiduciary responsibility to protect everybody because there is a lot of money at stake -- and in this particular case, it involved a case of cheating, which no one condones.

With no further comments on the issue, **Chair McLaughlin** asked Mr. Brennan to speak about yesterday's first annual RGA meeting. **Bob Brennan** said elections were held and identified the new slate of officers: Chris Kealy as Secretary-Treasurer, Gary Murray as Vice President, and Bob Brennan as President. An awards banquet was conducted which was touching and memorable. Vito Chiechi was presented with an award for exemplary efforts in getting the RGA to where they are today. They presented the first "Fred Steiner Award" which was presented to the Steiner family. On behalf of the RGA, Mr. Brennan thanked the Commission and their staff for all the assistance they've provided to the organization. He commented that the industry is starting to flourish; it is a good business, and it's a clean business. It's not without it's problems, but what business isn't. It creates 7,000 jobs, and it has a trickle-down effect of a half a billion dollars to the economy. It does good charitable things and the RGA is very proud of their work. The RGA looks forward to a continued work relationship with the Commission. Mr. Brennan also extended the RGA's appreciation to Senator Prentice for championing their bill.

Chair McLaughlin asked for any other comments from the public or Commission. **Senator Prentice** announced the second Senate Gambling Roundtable meeting is scheduled for October 27th at the Renton City Hall Chambers at 1:30 p.m. -- they will be continuing to discuss the entire zoning issue and the issue of problem gambling. She reported that they asked the insurance commissioner to survey what kind of insurance coverage is available for the problem gambler. To their surprise there were three insurance groups that came forward and said they provide some coverage. Some were only 50 percent, and one company pointed out that only 27 people have used the services to date. At the last meeting, Deaconess Hospital provided a presentation and it was noted that Valley Medical in Renton also has a program. Valley Medical will explain what their program consists of at the October roundtable session.

With no further input, **Chair McLaughlin** returned to the Dixie Schule Petition for review.

9. **PETITION FOR REVIEW:**

Dixie Schule, Card Room Employee, Seattle

Chair McLaughlin asked **Commissioner Forrest** to preside over the review. **Mark Watanabe**, Attorney for Ms. Dixie Schule and Steven Reinmuth, Assistant Attorney General presented their cases. At the conclusion of the presentations, **Commissioner Forrest** called for a 15-minute recess so the Commissioners could consider the matter.

Commissioner Forrest recalled the open public meeting and announced that the Commissioners had reached a unanimous conclusion. "We are reversing the ALJ's findings, and we are deciding that there has been a violation -- rather than have any further testimony, or remand, or anything else, the Commission has decided to impose a penalty of a six-month suspension." The Attorney General was directed to prepare the findings and conclusions in the usual way and to mail them to counsel.

11. **EXECUTIVE SESSION TO DISCUSS PENDING INVESTIGATIONS AND LITIGATION:**

Chair McLaughlin called for an Executive Session at 4:22 p.m. **Chair McLaughlin** noted no further business would be conducted following the Executive Session, with the exception of adjourning the meeting.

12. **ADJOURNMENT:**

Chair McLaughlin recalled the open public meeting at 5:00 p.m. and declared the meeting adjourned until 10:00 a.m. October 13, 2000.

**COMMISSION MEETING
FRIDAY, OCTOBER 13, 2000
DRAFT MINUTES**

Chair McLaughlin called the meeting to order at 10:00 a.m., at the DoubleTree Guest Suites in Seattle. The following attendees were present:

MEMBERS PRESENT: **LIZ McLAUGHLIN, CHAIRPERSON;
COMMISSIONER and VICE CHAIR, GEORGE ORR;
COMMISSIONER CURTIS LUDWIG;
COMMISSIONER MARSHALL FORREST;
COMMISSIONER ALAN PARKER;** (arrived at 11:10 a.m.) **and
EX OFFICIO MEMBER, SENATOR MARGARITA PRENTICE;
EX OFFICIO MEMBER, SENATOR SHIRLEY WINSLEY; and,**

OTHERS PRESENT: **BEN BISHOP, Executive Director;
ROBERT BERG, Deputy Director, Operations;
ED FLEISHER, Deputy Director, Policy & Government Affairs;
CALLY CASS-HEALY, Assistant Director, Field Operations;
DERRY FRIES, Assistant Director, Licensing Operations;
AMY PATJENS, Manager, Communications & Legal Dept.;
SHERRI WINSLOW; Special Assistant
JERRY ACKERMAN, Assistant Attorney General; and
SHIRLEY CORBETT, Executive Assistant**

GROUP IV – QUALIFICATION REVIEW (Continued from Thursday’s Agenda):

Spokane Athletic Round Table, Spokane:

Chair McLaughlin announced this matter was brought forward from yesterday’s agenda in order for a representative from the Spokane Athletic Round Table to be present as requested by the Commission.

Robert Berg, Deputy Director, affirmed that staff contacted Spokane Athletic Round Table yesterday, and asked them to attend today’s meeting. They made arrangements immediately to have their accountant, Verna Ringli attend, and she is present this morning. He noted that Commissioner Ludwig had a very specific question with regard to the allocation of costs, and how this organization could lose money on pull-tabs. Page three of the handout shows how costs were allocated for pull-tabs showing that after a 72.9 percent pay-out, leaving \$219,662, based on the allocation of costs, wages, depreciation, taxes, et cetera, they ended up with a loss of \$35,870 on pull-tabs which carried forward, and led to a \$31,122 loss on other gambling. It is believed Crane Games or some other form of small, miscellaneous amusement game-type gambling reduced the amount of the loss.

Mr. Berg said the reason this is before the Commission today and yesterday was because of the situation requiring the agency under WAC 230-40-065 to bring this forward to the Commission. The Commission has options, and staff had recommended yesterday that they receive temporary certification while their staff continued to work with the agency -- and in the alternative take whatever administrative action might be necessary.

Commissioner Orr asked what the time frame would be if a temporary certification is granted. **Mr. Berg** replied it is open -- as a practical matter, they will either come into compliance, or the agency will initiate administrative action. In any event, the Commission's rules require that staff brings these forward for a hearing before the Commission on an annual basis. Any kind of certification, be it conditional or otherwise, is only good for the one-year-period until the Commission sees it again. Staff cannot control the administrative process if charges were filed. Staff does not unilaterally control that clock. There are motions, pleadings, and discovery issues, which is why a time frame is not recommended. This puts the agency and the organization on notice that they are not "good to go" and that there are things that need to be done.

Commissioner Forrest believed that at some point, the Commission should say the organization is authorized to conduct gambling subject to the proceedings they may initiate. He didn't like the idea of approving someone when they are obviously out of compliance. Commissioner Forrest didn't think a new WAC was necessary, but, instead of saying temporary approval, there should be an inference that at some prompt time, the administrative proceedings would be initiated and would run their course. He believed the organization should know that unless something drastic happens, they're going to be faced with a proceeding to terminate their authority to conduct gambling. **Director Bishop** responded that Commissioner Forrest's suggestion sounded like a conditional certification, and noted the WAC does allow for such certifications. Commissioner Forrest agreed it might be a conditional certification. However, normally a condition is that the other guy does something -- what the Commission is saying is that this is until we do something.

Mr. Berg said he would defer to staff attorneys and the agency attorney general, but there is another option under the rule to return it to staff for further investigation. He believed the Commission could define what that further investigation is by saying we're returning it to staff to continue to investigate this matter and work with the licensee. **Commissioner Forrest** suggested they not worry about this particular case on this particular day, but at some point in the future we should either change the rule or have a formula within the rule that will indicate that the organization is continuing on sufferance, until the proceedings are concluded in their favor and if they're not concluded in their favor, that they're going to be out of business.

Chair McLaughlin invited Verna Ringli forward for questions and informed Ms. Ringli that she might already know that the Commission had been reviewing her organization for the past two months. She asked Ms. Ringli to inform the Commission how things were going. **Ms. Ringli** responded that within the last month, the organization had a new manager in place that is doing a wonderful job. The operation of the Bingo Hall is turning around and it's starting to operate like it should. She felt some hope for it now. She pointed out that they had theft, their former Executive Director passed away, and they had all sorts of things going on.

Chair McLaughlin opened the issue for public comment. **Senator Winsley** asked if the Big Brothers/Big Sisters of Spokane was one of their competitors. **Ms. Ringli** affirmed. Chair McLaughlin asked if all of the 36 employees were paid. Ms. Ringli affirmed. Chair McLaughlin asked if they were all Bingo employees. Ms. Ringli responded that some are Bingo, some are for the pull-tab games, and she noted the Bingo manager makes \$2,500 per month.

Commissioner Ludwig said that he was concerned their financial analysis for 1999 showed a loss on pull-tabs. He didn't perceive that as being too labor-intensive and by that he meant that it wouldn't require too many employees. He was trying to figure out how they could lose that much on their pull-tab operation. **Ms. Ringli** said when the bills arrive, she allocates 75 percent to Bingo and 25 percent to pull-tabs.

Mr. Berg referred back to the applicable WAC code, which gives three options to the Commission 1) to require the organization to submit additional information, or 2) to return the application to staff for further investigation, or 3) to grant a temporary or conditional license.

Commissioner Ludwig reminded him that the Commission chose one of those options a month ago by requiring additional information. **Mr. Berg** concurred, and added that they had exercised the third option last March by granting a conditional license to an organization that found themselves in a similar difficulty. **Commissioner Forrest** said the third option is closest to what they have been discussing, which is that they want the staff to continue to investigate and if some satisfactory solution isn't reached, staff will initiate a proceeding to revoke. **Commissioner Orr** commented this is controversial, and he supported Commissioner Forrest's comments and he believed that it is imperative that the Commission make sure that staff (without any delay) substantiate to the Commission so they can substantiate to their constituents that this organization is functioning properly. **Chair McLaughlin** said they could make a motion asking for a review within a certain length of time, to hear how things are going. Commissioner Forrest said this could also simply be tabled until the next meeting. Commissioner Forrest believed that essentially everyone is saying that they want staff to continue to investigate the matter, which is an option under the rule, and avoids the idea that they are "approving" it, and the approval is held in a suspension.

Commissioner Forrest made a motion seconded by **Commissioner Orr** that this matter be referred to staff for further investigation and that they receive an interim report at the next meeting how the organization is progressing. **Mr. Berg** suggested the time frame be increased so that staff could provide a more substantive report to the Commission. Mr. Berg noted that the bell has been rung and things have to happen now because one way the other, staff will of course try to work with the licensee to bring them into compliance, but they have already started down a road where a resolution must be found.

Chair McLaughlin asked Commissioner Forrest if he would like to amend his motion to increase the time frame. **Commissioner Forrest** said he would accept that type of an amendment. **Commissioner Orr** concurred and volunteered to either withdraw his second or amend the motion to state that staff will report to the Commission in a reasonable amount of time. **Commissioner Forrest** amended the motion to request a report at the January 2001 meeting. **Commissioner Orr** seconded the amendment. **Chair McLaughlin** asked for a restatement of the motion. **Commissioner Forrest** made a motion seconded by **Commissioner Orr** to continue this matter to the January meeting for a staff report on the results of their continuing investigation.

Chair McLaughlin called for further discussion. There was none and she called for the vote. *Vote taken; motion carried with four aye votes.* **Commissioner Forrest** observed that that vote does not preclude the director from initiating formal proceedings prior to that date.

1. **MINUTES – September 14 and 15, 2000, Wenatchee:**

Commissioner Orr made a motion seconded by **Commissioner Forrest** to adopt the minutes of the September 14 and 15, 2000 meeting as presented. *Vote taken; motion carried with four aye votes.*

Rules Up For Final Action

2. **Charitable/non-profits Owning a Commercial Gambling Establishment.**

WAC 230-04-026 - Ownership of a commercial gambling establishment by charitable and nonprofit organizations. (Moved to the last item of business at the request of Commissioner Parker.)

3. **Surprise Punch board/Pull-tab Prizes:**

WAC 230-30-070 – Control of prizes-restrictions-bonus prizes-displaying-procedures for awarding.

Amy Patjens reported this item is up for final action. The Commission has been discussing this for the last two months. Pull-tab operators can give away either merchandise or cash prizes. The bulk of the pull-tabs played in this state are usually for cash. Surprise merchandise games are actually wrapped up so the customer cannot see what it is.

These games have been allowed for years by policy but with no rules in place for them and because of that, it would be easy to infer they are not allowed. As a result, staff felt it was appropriate to have rules so that licensees as well as staff would know what is allowed. At last month's Commission meeting, there was discussion on whether the operator should be required to list the actual cost on the outside of this wrapped-up prize, which had been staff's original proposal. Several of the commissioners commented that they felt this would take the surprise out of the game. Staff is offering an alternative that is labeled Alternative #1. However, the language in Section 5, items (i) through (iv) are not required because they are already included in other rules. The main issue by law was that the prize must be in the immediate vicinity of the pull-tab game.

Staff is suggesting that under 5a(i), some language would be added so that it would say that the merchandise prizes shall be displayed as follows: In the immediate vicinity of the punch board or pull-tab series and in plain view; provided that games that offer merchandise prizes that are surprises may be wrapped in some way so that players are unable to identify what the prize is until opened. The four words "the following requirements apply" would be deleted along with the language in Sections i through iv. Staff recommends final action with the alternative language -- or the other option would be to hold this matter over until next month if anyone feels that this language could be improved, or more time is desired for consideration.

Chair McLaughlin asked if this surprise has a type of flare that tells what the value might be. **Ms. Patjens** said the prize won't be listed, but a flare is required in another rule, which is why staff felt it was redundant to have the language again. The flare would be listed with "Prize A" and then Prize A would be sitting in the same vicinity and it would be listed as Prize A. Once prize A is won, then the operator would still be required to mark it off the flare. Chair McLaughlin verified there wouldn't be a dollar value identified. **Ms. Patjens** affirmed.

Commissioner Ludwig said he still had a concern with this rule because we haven't had problems or concerns. He believed adopting a rule that may make things more complicated and removes the operator's marketing options is unnecessary. **Director Bishop** responded that this actually gives the operator a lot of latitude in their marketing, and in fact codifies what has always been policy. Commissioner Ludwig thanked Director Bishop for the clarification, and based on that answer, changed his view because the Commission shouldn't be operating on policy, but by rule.

Ms. Patjens drew attention to correspondence from Julie Porter who is the owner of Washington Gaming Consultants. This is a business that helps pull-tab operators on how to display pull-tabs, and they are urging the Commission to choose Alternative #1, because merchandise prizes are a very small part of the market -- and the surprise pull-tabs are even a smaller segment of the merchandise prize market. **Chair McLaughlin** opened the discussion to public testimony. There was none and the discussion was closed.

Commissioner Forrest made a motion seconded by **Commissioner Orr** to adopt the rule as amended by Alternative #1. **Ms. Patjens** asked if his motion included the language as she had read it into the record. **Commissioner Forrest** affirmed. *Vote taken; the motion passed with four aye votes.*

4. **Reporting Changes in Management.**

WAC 230-04-330 – Change in management.

Ms. Patjens noted this rule addresses when an organization needs to notify the Commission about a change of management. It applies to both commercial operators and nonprofit organizations. The rule was first considered several months ago when there was a package before the Commission streamlining Bingo rules. The goal is to make sure the information that we ask for on our annual renewal application is the same as what our rule actually says. There were some questions last month from some commercial operators on whether they had to report each time that they hired a floor supervisor (sometimes referred to as pit bosses) because these people may make management decisions. This was not the intent of the rule. Staff added language to clarify this, but when they were looking at it again, they felt they could still do more work on this to make it even clearer. The changes are labeled in Amendment #3. Staff suggests this rule be held over for final action next month. That will give anyone in the industry who has questions and concerns about the new language an opportunity for further consideration and an additional comment

period. Holding the rule over won't change the effective date, it will still be effective January 1, 2001. **Chair McLaughlin** called for comments or questions.

Commissioner Orr made a motion seconded by **Commissioner Forrest** to hold over WAC 230-04-330 on reporting changes of management until the November meeting. **Chair McLaughlin** opened the issue for public testimony. There were no comments and the hearing was closed. She called for further discussion, there was none. Vote taken; the motion passed with four ayes.

5. **Promotional Contests of Chance.**

WAC 230-46-010 – Purpose; WAC 230-46-020 – Definitions; WAC 230-46-025 – Telephone charges – Valuable consideration; WAC 230-46-070 Punch boards/pull-tab dispensing devices not to be used in promotional contests – Exception.

Ms. Patjens reported this rules package is up for final action today. During the last legislative session a law was passed simplifying what a person can be required to do to enter into a promotional contest of chance. This provision for promotional contests of chance was put under the Gambling Act many years ago. Items 5A, C, and D are housekeeping changes. They are simply inserting the new RCW cite into the rule. Item 5B is a repealer. There were several definitions, and we don't need the definitions because the term is obsolete and not used under the new law or because the term is already defined in current law.

Yesterday during the study group session, Julie Porter had a question on Item 5D, talking about the promotional game cards and pull-tabs that violate the provision, which could be subject to immediate seizure. Ms. Porter suggested that staff insert the word "pull-tab" before "dispensing devices" in Subsection 2. This would match the title, which is "Punch board pull-tabs and pull-tab dispensing devices" and also matches the language in Subsection 1. It would make the language consistent. Staff supported Ms. Porter's suggestion and recommended final action.

Commissioner Ludwig made a motion seconded by **Commissioner Orr** to approve the proposed rules on promotional games of chance listed in 5A through 5D, including the change to insert pull-tabs in Subparagraph 2. **Chair McLaughlin** opened the item for public testimony. There was none and the testimony was closed. Vote taken; motion passed with four aye votes.

6. **Credit Union Raffles:**

WAC 230-02-161 – Bona fide nonprofit organization defined.

Ms. Patjens reported this rule is up for final action. A change was made to implement legislation that was passed during the last session. A law was passed to define credit unions as bona fide nonprofit organizations for purposes of conducting unlicensed raffles. Unlicensed raffles are raffles that don't exceed \$5,000 in gross revenue and tickets are only sold to members. People who belong to the credit union would be the individuals purchasing the tickets. Item 6A simply defines a bona fide nonprofit organization and adds credit unions to the list. Staff recommends final action.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to approve the rule change for credit union raffles in WAC 230-02-161. **Chair McLaughlin** opened the item for public testimony, there was none, and the testimony was closed. She called for further discussion, there was none. Vote taken; the motion passed with four aye votes.

Rules Up For Discussion

7. **Bingo Net Return Task Force Rules**

WAC 230-04-260; WAC 230-08-255; WAC 230-20-059; WAC 230-20-062; WAC 230-30-052; WAC 230-50-010; WAC 230-02-362; WAC 230-02-364; WAC 230-02-366; WAC 230-02-530; WAC 230-02-535; WAC 230-02-540; WAC 230-20-540; and WAC 230-20-060;

Sherri Winslow, Special Assistant, reported that the net return task force rules were filed at the last Commission meeting. Discussions continue regarding the proposals and additional options. Task force members have been encouraged to comment in support of the rules or with suggested alternatives. She said she would present each of the rules as proposed and she noted that she does have an alternative that will be read into the record for potential filing.

WAC 230-04-260 - Effect of exceeding license class limits, procedures and penalties. The changes were recommended to reflect the new net return requirements under the program that is being proposed. The variance reference was also eliminated because it is recommended for repeal. Since the last meeting, there was an adjustment in Section 5 to add the language for Bingo gross receipts and prizes paid.

WAC 230-08-255 - Changes were recommended to make this rule easier for staff and licensees to test for significant progress. Actual percentages used to calculate significant progress remain the same. However, if an organization doesn't keep gambling income separate from non-gambling, additional testing of functional expenses is required. One last change was made to recognize programs that are primarily operated with non-depreciable assets, which were focused on activities such as soccer fields.

WAC 230-20-059 - Minimum net required for Bingo games. The proposal has a new blended rate for measurement periods beginning on or after December 31, 2000. The rates are calculated similar to a federal income rate. The effective rate required for organizations will be lower with the new blended rate than previously required for organizations. Allowable rental income was added to combine net income for the net return calculation. Since the last meeting, Bands F and G were removed to make this WAC rule consistent with actual Bingo license levels.

WAC 230-20-062 - Minimum net return from Bingo games - Sanctions. The sanctions rule is recommended for changes for organizations with measurement periods on or after December 31, 2000. If organizations don't meet the net return during any quarter they are required to provide Commission staff with a written plan of action to gain compliance within 45 days of the quarter end. Changes for not meeting return are to limit an organization's pay-out percentage in the first year, reduce its operation one band level in the second year, and two band levels in the third year. Organizations failing to have a positive cash flow for any two consecutive calendar quarters are deemed to be operating for gambling purposes and subject to administrative action. Licensees who have their Bingo gross receipts limited, and who want to petition for relief, are given specific requirements. Since the last meeting a change was made in Section 2 to clarify the intended sanction for the first year. Language was deleted in Subsection 3 to eliminate conditions for summary suspensions.

WAC 230-30-052 - Punch boards and pull-tabs operated by charities and nonprofits. Changes were recommended to make this consistent with rules in the net return rules package.

WAC 230-50-010 - Adjudicated proceedings hearings. Criteria was included for this rule to add hearings for net returns and significant progress. The hearing process for variances is recommended to be deleted since the variance rule is recommended for repeal. All the other rules in this package are being recommended for repeal since they are no longer needed for the regulatory program under the proposed rule package.

Ms. Winslow reported that an additional rule has been proposed since the discussion at yesterday's study session, and asked if the Commission would like her to read that into the record. **Commissioner Forrest** said he didn't want Ms. Winslow to have to take responsibility for a suggestion that in some measure was at his pushing and he appreciated Ms. Winslow's attempt to put something together for discussion today. Ms. Winslow said the WAC rule they are discussing is **WAC 230-20-059 - Minimum net return required for Bingo games.** The proposal is to change the approach and to possibly change the title to "*Minimum requirements for Bingo games.*" The intent is to change the focus from a net return and emphasize a percentage requirement off the gross receipts of the Bingo game. She then read each section:

Subsection #1 of the existing rule – Proposed to delete the language after 230-04-202, which says "or as restricted by

the Commission under WAC 230-20-062” -- referencing the sanctions rule would no longer be needed because we have all the information in this particular WAC.

Subsection #2 was read into the record as proposed: “To insure that organizations licensed to conduct Bingo games meet the intent of RCW 9.46.010 and provide funds adequate to promote charitable and nonprofit programs. Such organizations shall not award prizes or pay expenses to conduct Bingo games that are excessive. Organizations shall retain Bingo gross receipts of 0 percent plus a positive cash flow for license classes A through F; 2 percent for license classes G through K; and 3 percent for license classes L and above. The Commission may restrict the organization’s Bingo gross gambling receipts prizes and/or expenses if the organization’s gross receipt percentage is not met. Organizations failing to retain the gross receipts required percentage for any two calendar quarters shall limit prizes paid to 74 percent until compliance is met, or the director may institute action to revoke their license. Failure to meet this gross receipts and/or prizes paid percentage, in any subsequent quarter, shall result in administrative action.”

Subsection #3 - the suggestion was made to make this apply to measurement periods on or after December 31, 2000. It is unknown if this is a possibility.

Chair McLaughlin asked if someone had gross receipts of \$4 million how much would they have to return to their organization. **Director Bishop** said \$120,000. **Commissioner Forrest** said he was not wedded to any particular percentage. What he hoped to do with this discussion was come to a situation where the rule is a simple rule -- depending on the size of the operation, that there’s a fixed percentage of the gross that should go to the charitable nonprofit purpose. We may need other controls to meet some demonstrated need and we should have some concern about predatory prizes. He hoped this would be more reasonable instead of the endless percentages and changes, and blended percentages, and what to do about rent, and what to do about depreciation. He emphasized these are responsible organizations, they’ve got logical people running them, and they are in an environment of survival rather than prosperity. Commissioner Forrest believed that the Commission’s principle responsibility to the state is to see that a reasonable percentage flows to the charitable purpose – and he was open to persuasion on what the exact amount should be. He noted that we have lost some games already and there are others in jeopardy, and the Commission must be realistic. Commissioner Forrest emphasized the need to face the grim reality that this is a tough declining market -- the last thing these organizations that perform such valuable social services need is a lot of detailed regulations that cause bookkeeping and accounting complications and don’t advance the public interest. The public interest is that the game be honest, and that it results in cash benefits to the charitable purpose. Those are our two guiding principles and added with whatever we need to protect against some kind of unfair predatory pricing.

Commissioner Ludwig said that without reference to the percentage numbers, he liked the simplicity of Commissioner Forrest’s proposal and he pointed out that whatever percentages are decided, the figures are minimums. They are not standard or maximum, and this seemed to be a step in the right direction.

Commissioner Orr agreed. He said it will take some tweaking, but it’s certainly a quantum leap in the right direction. **Chair McLaughlin** said she liked the Commissioner’s style, but she just didn’t happen to agree with the percentage because it seemed to be very low figure for a game that would make that kind of money.

Chair McLaughlin agreed the philosophy is very good. **Commissioner Forrest** said an idea might be to compare any given percentage, 2, 3 or 4 percent with what has been happening in the past (what can a \$3 million game reasonably be expected to produce in the way of support for the charitable purpose). Then staff can extrapolate from what has happened, versus what it would produce under the new rules. It’s not a maximum – presumably the operators like the charitable purpose they’re working for and if they can generate 10 percent by better management, more power to them. What the Commission should say is, if you don’t do this, you’re out of business. Chair McLaughlin agreed it would simplify the process from the Commission’s point of view, but she wasn’t sure whether it does for the staff.

Director Bishop agreed with the need for simplicity. He didn’t necessarily agree with the percentages or with

the hands off approach and to only try to control predatory practices. It's a difficult arena. He believed the rules would get much thicker if we start defining predatory practices. Director Bishop expressed some concern about the low rate percentages. He indicated that he would rather say you couldn't lose money -- if you do, you're out of the program.

Chair McLaughlin asked Senator Prentice how the Legislature feels about Bingo. **Senator Prentice** said she can't individually speak for the entire legislature, but she has spent a few years trying to gauge what the mood is. She said the discussion as to how much money going to staff and how much going to the organizational goals is a discussion they haven't had. However, given the sympathy that Bingo has within the legislature, the charitables would be really unhappy to find out that the thing that they've been defending and fighting for wasn't coming true. In light of Director Bishop's comments, Senator Prentice asked, at what point do you pull the plug? That's where the industry really has not come to grips. The Commissioners are trying to attach a figure, but they haven't really been able to define that. Senator Prentice believed the Legislature would be pretty unhappy if they felt the wool had been pulled over their eyes, and it would harm future efforts. **Senator Winsley** agreed.

Commissioner Orr agreed with Commissioner Forrest, the activity is supposed to be honest and it's supposed to provide a return, and the return is the debate. He urged full speed ahead and applauded Commissioner Forrest's and staff's efforts. He asked Ms. Winslow if she could take the concepts offered today and bring them back next month after meeting with the task force. **Ms. Winslow** affirmed. **Commissioner Forrest** thought it ought to be solved today. He believed that whatever the percentage is, the percentage that has to be returned to the charitable purpose is the best test of when to pull the plug. Whatever that figure is, the Commission is confronted with people who don't meet the certain requirements, (they vary from jurisdiction to jurisdiction, from people with good leases, people with bad leases, people who own their own building, people that don't, people that can sublet part of building, etc.) of all of these various complications. Commissioner Forrest believed that what the Legislature would want is to be sure that at the end of day, the charitable purpose is supported in some reasonable percentage. If that is not done, then the organizations should raise their money some other way. He believed there couldn't be a better way to test whether the public interest is served by bottom line percentages of a gross figure that goes to the charitable purpose.

Chair McLaughlin asked if the new rule was adopted, at whatever percentage, would it eliminate the need for bands? **Ms. Winslow** responded that if that rule was chosen, staff would then recommend that the Commission not pass the WAC rule that has the bands in it. However, the language that she read into the record actually separates the percentages by license classes, and it is very specific.

Chair McLaughlin noted that if the Commission did consider filing this rule, it would at least put everybody on record that it is under consideration. In some cases, that's helpful so all the licensees that can't attend the meetings know that it is being considered. **Commissioner Ludwig** affirmed that could be a suggested amendment and asked if it had to be filed separately. **Mr. Ackerman** believed that it was close enough that there didn't need to be a separate filing.

Director Bishop asked for clarity on the sanctions issue. The problem is the larger and organization gets, the easier it is to make 2 percent -- so by saying 2 percent, under the proposed rule, someone who would have only had to return .5 percent will now have to return 2 percent. Director Bishop didn't believe that was fair. He thought staff would have to seriously consider this analysis in conjunction with the predatory practices that may be available. He affirmed staff would prepare some analysis for the Commissioners consideration. Director Bishop explained that currently, the lower five classes have no regulations on a required net return. In the first quarter, they averaged about a 9.5 percent net income -- and many of those organizations don't have to pay a lot of rent. This maybe is an argument for saying, "just don't lose money."

Chair McLaughlin asked Ms. Winslow if she had completed her presentations and **Ms. Winslow** affirmed. She

then opened the issue for public comment.

John Beadle, Seattle Junior Hockey Association, spoke as an individual licensee, and supported the approach that is being considered. It's more favorable than what has been done in the past. He reported that he has participated in the Bingo study committee since its inception in the early 1980s. The committee has always wrestled with the net income and payout percentages. They keep reviewing it again and again, and now it is a very difficult time because of the downward trend in revenue with Bingo – there's been a dramatic decrease, its still decreasing, and no one knows where it is going to bottom out. He affirmed the task force and staff has been trying to develop some kind of minimum solution to prevent having to revisit this issue. He stressed that the nonprofits are good people who will attempt to make as much money as they can for their nonprofit organization no matter what the rule says. Mr. Beadle concurred that the 2 or 3 percent figure may sound low, but reminded everyone it's minimum. Mr. Beadle agreed there had to be a threshold of when an organization may stay in business and when they need to go out of business. He suggested the 2 percent (or less) figure might be the time for a particular sanction with a stated period of time to get back in compliance (perhaps six months). If the organization isn't in compliance within the stated time, they're out of business. He stressed that no one in the business supports a nonprofit staying in business if they do not provide funds to their charitable cause. He suggested making such a statement in the WAC itself and inserting mandatory reviews of those percentages, for instance, every 18-month period, and make appropriate adjustments upon completion of the review. Hopefully, some legislative relief may arrive between now and then.

Commissioner Parker arrived at 11:10.

Don Kaufman, General Managing Director, Big Brothers Big Sisters in Spokane, reported his organization returned \$400,000 to charitable purposes last year. He cautioned that when the industry is in a downward spiral, it's even getting very tough for the big games to meet net requirements. The customer expectation is for a certain level of food, a certain level of service, a certain level of prize payout, and even when the customer attendance starts declining, management adjustments have to be made. Mr. Kaufman indicated that it's a much tougher environment for a large game to meet the standards as established in the past -- and it's actually more difficult to manage that game in a declining environment as you try and keep hold of that crowd while you're cutting pay-outs and while you're cutting staff hours and trying to have an appropriate schedule that will draw the customers, and still keep making money for the nonprofit effort. Mr. Kaufman reiterated that of the \$400,000 donated, the figure it was based on was about a \$330,000 net and he wasn't confident the organization would hit that net figure this year because they have lost another 12 to 14 percent of their customer base this year. He noted that in the last eight years, his crowd count has been cut in half. There are more opportunities for the entertainment dollar and more exciting ways to use that entertainment dollar. The machine play around Spokane is tremendous -- there are thousands of machines within driving distance of Spokane, and house-banked Blackjack has recently emerged.

Bob Ransom, President, Cascade Youth Music Association, expressed concerns relating to the formula. The business usually figures 75 percent going out in prizes, and 20 percent going out in administrative costs, which leaves 5 percent. Then taxes are calculated, and it's based on the 25 percent after the 75 percent in prizes, which is another 1.5 percent. Another concern is that the nonprofit association seemed to prefer the blended rate and suggested that it not be over 2 percent for others. He questioned how the very small organizations that are not in the top 40 could even make the 2 percent. Lastly, he noted that most organizations usually make half of their profit during January, February and March, and are lucky to break even during the summer months. He hoped there would be a one-year flow in the figures because there are quarters when the percentages would be virtually impossible to make.

Commissioner Forrest asked if the basic idea was that there should be some percentage related to the gross that determines whether a charitable nonprofit Bingo game should be operating or not -- is that a fair test? If not what should the final decision be about when we say you can't operate? **Mr. Ransom** agreed there needed to be cash returned to the programs and supported some percentage formula. In grocery stores, a 1 percent margin is considered reasonable margin -- what that is in the nonprofit Bingo environment, is another question. He believed 3 percent with the tax considerations is very difficult, particularly if it is charted by quarters.

Chris Kealy, speaking as a citizen, said he has listened to the nonprofits' struggle with the net return requirements. He addressed \$300,000 to 400,000 going into nonprofit activities and energizing people who are putting 55,000 hours of community service in action. When you do the math on the hours, it turns out to be about four bucks an hour -- they aren't doing it for the money, they are doing it because they care about the kids. When \$400,000 is weighed against, let's say \$5 million in Bingo revenue, and that math turns out to be 9 percent, how we judge what that percentage is in relation to the gross for the net gets so lost on the whole market concept. Mr. Kealy noted that a slot machine works on about 99 percent payout. They don't care how much they pay out because they know that the person that came to the machine that day is willing to spend \$50 at the machine and they're going to play the machine until they lose the \$50. But it's a value-for-service relationship; it's not the percentage. Bingo players want to win in proportion to their experience. But when you drive the math into having them make them win more, making the game less friendly to the consumer and no one having a winning experience, the customers will leave. Bingo operators certainly need relief on this concept, not because they're competing against each other, they need an opportunity to look at the business and cycle the dollars differently. That is what will actually happen by changing the rules on the net return requirement. The industry will see that the total volume of dollars going to Bingo and the net return to the agency and their mission statement will stay on a stagnant trail downward, until they get new products and services or hours of operation, but they still will be able to achieve a valuable mission in their community and they should be allowed to do that.

Commissioner Forrest asked him how he thought they should determine that a game should or should not be operated. **Mr. Kealy** believed that sooner or later someone will have \$2 going toward their mission and a million dollars in employee costs, and have a \$10 million game. That's the math we don't want to see. Mr. Kealy believed in doing the mathematical relationships - what's the relationship to the return to the mission compared to the payroll put out, and what are the costs of operation? That relationship is a more valuable piece to be looking at. Commissioner Forrest observed that he was saying that if the cost of running a game was 50 percent, that's too much even if they made a lot of money. If the cost of running a game was 20 percent, that's a good thing even if they didn't make any money. He understood the thrust of the argument -- that you need to keep people playing and you may have to, for that reason, affect the percentage of pay-out and so forth, but aside from that, we can't micromanage every game. Commissioner Forrest said he couldn't quite visualize how to relate the payroll percentage to a test that would be a reasonable test of whether the game should exist or not. Mr. Kealy believed the industry itself might be able to look at that because they have some understanding of these matters. The regulators will find that relationship of labor to net and if it's not there, it's not there.

Mr. Kealy noted that 76 percent of the population gambles at large. About 27 percent like table gaming, 15 to 18 percent actually enjoy Bingo, a larger percentage, say 50 plus percent like the slot-machine type activity which is some of the overlap between the Bingo customers. The table gaming customer doesn't like the slot machines as much. He believed that when and if we could get Bingo electronic devices, it would help the industry a lot.

Bob Brennan, Citizen, said he has been very involved in charitable organizations. He stated that he has never been involved with a charity yet that didn't appreciate any dollar that was given to them. He acknowledged the Commission has a very difficult task -- and it's not easy today to make money in this business. He forewarned the charities that if they don't adjust costs, maybe even on a daily basis, and if they don't watch the costs, they couldn't make money. He acknowledged a problem that some people signed agreements or leases that were fine five years ago, but they're not fine today -- you can't pay \$20,000 or \$30,000 a month in rent and expect to survive. So they have to go to their landlord and renegotiate a lease. They have to look at their people and their margin on a continuing basis. If the revenue's down, your costs automatically become a greater percentage of the business. Mr. Brennan liked Commissioner Forrest's formula -- at least you have a base.

There were no further public comments, and **Chair McLaughlin** closed the public testimony. She noted this matter would come before the Commission for final action next month.

Commissioner Ludwig made a motion seconded by **Commissioner Orr** to include as an amendment the proposed

new net return alternative read into the record by Ms. Winslow. **Chair McLaughlin** called for discussion, there was none. Vote taken; motion passed with five aye votes.

Chair McLaughlin recessed the meeting at 11:30 a.m. and recalled the meeting at 11:55 a.m.

Chair McLaughlin returned to Agenda Item #2:

2. **Charitable/non-profits Owning a Commercial Gambling Establishment.**

WAC 230-04-026 - Ownership of a commercial gambling establishment by charitable and nonprofit organizations.

Ms. Patjens reminded the Commissioners a nonprofit organization has created a for profit corporation, and has submitted an application to open a house-banked card room. This rule is up for final action today. In the past few months, most of the discussion centered on card rooms, in part, because that's the application that was before the Commission. Last month staff brought forward two amendments. The first amendment limited the restriction to just card rooms, meaning that the prohibition was that a charitable organization could not own a public card room. The second amendment was broader and would prohibit a charity or nonprofit organization from managing, operating or owning an interest in any other gambling activity authorized by the Gambling Act. This, for example, would prevent a charitable organization from creating a for profit corporation and opening a restaurant that might have a pull-tab license. The Commission decided to go forward with the second amendment, which was the broader amendment and staff did some word-smithing after the rule was published, and copies have been made available. Staff recommends final action, and because a current application is pending, staff would ask that any rule adopted be effective 31 days after filing -- it would be effective the middle of November rather than waiting until January first. The agency can then provide a definite answer to the applicant.

Chair McLaughlin asked Ms. Patjens to read the amendment into the record. Ms. Patjens read: "A charitable or nonprofit organization that takes any part in the management, operation, or ownership of any authorized gambling activity conducted pursuant to a license issued by the Commission, shall not take any part in the management, operation, or ownership of any commercial gambling activity authorized under Chapter 9.46 RCW."

Chair McLaughlin asked what this does to a licensee running pull-tabs from a commercial establishment, such as the one they approved for Seattle Hockey. **Ms. Patjens** said that would not have any effect because in that scenario, the charity is selling pull-tabs as the charity. It was a lease. They did not create a separate corporation. Chair McLaughlin noted the pull-tabs they're allowing the commercial establishment to buy are still owned by the nonprofit. Ms. Patjens concurred and said they are allowing the patrons at the commercial establishment to buy the pull-tabs.

Commissioner Forrest distributed some personal remarks to the Commissioners and staff because so much of the discussion on this issue seemed to address the expansion of gambling issue. He did not think it would create an expansion of gambling if a rule was adopted which allowed this activity. In present form, the rule prohibits it. Anybody in or out of the state of Washington that has the money, the gumption, and the confidence, can apply and get a license as long as they don't have a criminal record and so forth. The Legislature has said that the market determines how many card rooms there are going to be. All we're saying is that anybody can run a card room except a charitable nonprofit corporation. In other words you can run a card room for private gain, but you can't run it for public benefit, because by definition, charities and nonprofits are operating for public benefit. Commissioner Forrest believed the real issue is a political issue and we now we're reacting to a particular application. We know the Legislature is going to meet, and the Legislature has some proposals to help nonprofits and charities supplement their current revenue from Bingo. Commissioner Forrest expressed concern about forbidding this activity in a formal rule -- he believed it's wrong in basic philosophy. He advised that he had not been convinced by a persuasive argument why a charity can't operate a card room. He could not find anything that offended him, he didn't think the charities were going to be contaminated by being involved in what we think is a respectable, healthy, law-abiding industry, and he didn't think the industry will be threatened by the fact that a few, very few, charitable nonprofit corporations would engage in this activity. Everyone knows that opening a card room takes a lot of money, it takes a good location, and it takes some very capable management. This is not a license to print money. **Commissioner**

Forrest acknowledged there's not much sympathy in the Commission for affirmatively authorizing charitable nonprofit corporations to run card rooms. Philosophically, he believed that is wrong. He advised that waiting wouldn't trouble him until the Legislature has acted. He thought a very persuasive case could be made for a few charitable nonprofit corporations, that this would be a reasonable source of additional revenue. In particular, it would let them use an asset they acquired back when the Bingo market wasn't as competitive and wasn't in a declining industry. Commissioner Forrest reminded the audience Bingo was originally a very valuable privilege that the Legislature conferred on charities and nonprofit corporations. At that time, we didn't have the current climate with card rooms and casinos, so it's a whole different world. Commissioner Forrest agreed with the Attorney General's analysis, that there's nothing specific that prohibits this activity.

Commissioner Forrest said that he would like to see this item wait until after the Legislature has met and acted. Since at least one organization has sought this approval, if the Legislature really feel this is a serious matter and it's a threat to something, they could just enact a statute to the same effect as the proposed rule. He advised that he would vote against the rule. He believed it was wrong in a long-term philosophy to prohibit this activity and he believed it was unfortunate that the changing recreational gambling environment has produced such a great deal of hardship and loss of revenues to a series of very worthwhile activities.

Commissioner Ludwig said he remembered making the motion to file the rule in its present form based on the way he felt at that time. He said he's a little disappointed that the matter is up for final action because he recognizes there has been at least a difference of opinion among members of the Commission. At the same time, it is still a problem for him to think a charitable or nonprofit organization can be two different things. He recalled that at some past meeting, Commissioner Parker had suggested the danger to the charitables or nonprofits because they may lose that status if they're in a commercial venture. He is very sympathetic to the basis for Commissioner Forrest's note and his feeling that this may give the charities a chance to really improve their situation. Commissioner Ludwig felt that was commendable. He said, "that's what the Commissioners all want to do." This is new territory and Commissioner Ludwig advised he was looking forward to the public comments specifically in the area of whether or not a charitable or nonprofit organization wanted to risk their tax exempt status and their status as a charitable or nonprofit organization.

Commissioner Parker asked for a clarification – he didn't think the Commission was considering a proposal as to whether or not charities can operate card rooms. He thought they were considering whether or not charities could own commercial gambling operations, which is a different question. He personally would have no problem with charities being able to operate card rooms if that's what the law provides. Commissioner Parker believed we were really considering a question of whether they can take this dual role of being a charity under the law and at the same time put on a new hat and call themselves a commercial venture and do what commercial ventures can do under the law. He believed that if the Legislature affirmatively acts to move and authorize them, then that's their role. However, he believed the Commission's role is to interpret what the law is, and to say we don't believe that the law provides for this activity. Commissioner Parker believed that if it's our role to make this interpretation, then he was in favor of the interpretation that's on the table.

Commissioner Orr agreed with Commissioner Ludwig, he felt the Commission needed to be careful so their actions aren't perceived as an expansion of gambling. He was quite concerned that if the Commission didn't do something, this would appear as an expansion of gambling.

Senator Prentice cautioned everyone to be very careful about appearing as if somehow or other we're daring the Legislature to do what we believe is the right thing. The Legislature is an unpredictable beast, and we have no idea how the elections are going to turn out. This discussion first came before the legislators at their roundtable meeting, and they were really angry at that proposal. She said it was very difficult to even get the little improvements -- the 5 percent tax reduction which was before I-695 took effect that protected them from having their taxes raised. Senator Prentice believed it would be difficult to convince people that we're not expanding gambling. She worried about this notion that if somehow the legislators individually heard all of the Commission, then they'd agree. It doesn't work that way, and she didn't want to have it look as if the Commission is going to do this anyway. If they did, she

guaranteed it would be impossible to pass the legislation the charitables are now considering and urging the Commission to pass.

Jerry Ackerman reminded the Commission to the extent that they are tempted to put off their decision on this and wait for the Legislature to act, that there is an application pending at this time. The review of that is essentially complete. If the Commission did decide not to act one way or another as far as establishing a policy in the form of a WAC, then in all likelihood, that application and any others that might be presented would in fact come before them on a case-by-case basis as required by RCW. RCW 9.46.120 says that an applicant couldn't hold that second license without the Commission's approval. Unless the application was withdrawn, he didn't see a way that the Commission would not have to confront this very shortly.

Chair McLaughlin thought that might send the wrong message to Legislature. The last Commission that met before the last legislature supported the nonprofits in their quest for electronic Bingo machine. Speaking for herself, she advised would do everything she could, as an individual, to support the nonprofits getting the electronic Bingo games -- because that is not an expansion of gambling. It's just a different way to play Bingo. No one else will get it, just the people that have Bingo and they are very effective. Chair McLaughlin believed it would be very poor to send a message to the Legislature that the Commission had this before them and didn't act on it, even with an application before them. Chair McLaughlin opened the item for public testimony.

John Beadle, Washington Charitable and Civic Gaming Association, said this subject was discussed last night and the WCCGA reaffirmed their position as provided at the August meeting that there really is no need for a rule covering this area, and that it should be removed from the agenda. With regard to Commissioner Ludwig's question on the IRS exempt status, the WCCGA did look at this, and since they have abandoned this issue they have not considered it further. However in doing so, their first concern was whether they would jeopardize their IRS 501(c)(3) exempt status. Mr. John Johns who's located in the Seattle IRS Office reassured him that as long as it's a legal, authorized activity in the state of Washington, it would not affect their 501(c)(3) status. This individual is very knowledgeable, he comes out of the Washington D. C. office, and he knows all of the rules and regulations. Mr. Beadle suggested that if somebody should apply for a license, the Commission could insert a condition that the licensee provide a letter from the IRS attesting to the fact that it would not jeopardize their tax exempt status. The Association's official position, however, is to just remove this item from the agenda. **Commissioner Ludwig** verified that Mr. Beadle was saying they don't need the rule; the Commission can just rely on the statute and approve on a case-by-case basis. **Mr. Beadle** affirmed, and noted that he listened very closely to Senator Prentice's comments about the industry's future legislation.

Commissioner Ludwig said as a practical matter, in reference to the existing applicant, if the Commission relies on the statute and the one applicant is approved, then everybody else that qualifies financially and meets the agency requirements would be approved. **Mr. Beadle** agreed that the precedent would be set unless they grandfathered the existing applicant in after they passed the rule.

Bob Ransom, President, Cascade Youth Music Association, responded that he is the applicant, and their position has been that it would be a good idea to have a card room as a separate entity within their building, rather than share it. Their request was submitted as an application, which they expected the Commission to either accept or reject and to provide the reasons if rejected. They did not ask for a rule; staff proposed the rule to the Commission. He affirmed he has been contacted by other nonprofits that are concerned about the implications of the published rules. They have concerns about the secondary effects of the published rule and the amendment. They believe it's going to have a secondary effect that's detrimental and not desirable for the industry and they are asking the Commission to withdraw the rule and amendment. A decision would still be necessary on the original application.

Chair McLaughlin noted that without passing the rule, staff is in the same position they were before the whole issue came up, and she asked Assistant Attorney General Jerry Ackerman for a response. **Mr. Ackerman** affirmed, the original impetus for the rule was that the director and staff needed direction as to how the Commission wished to proceed.

Bob Tull, Bellingham, Attorney for Seattle Cascade Booster Club, said he has also looked at aspects of this question for two other nonprofit licensees and as this discussion has evolved and the proposed rule has evolved, it is difficult to keep track of all the issues. Among other suggestions, he thinks the Commission should set this issue over until next month, at least, to determine whether or not the consequences are those intended. **Mr. Tull** said he is not aware of any articulated regulatory basis for this rule. His construction of the gambling statute has always been one that gives this Commission great power. However, he believed that power is only wielded when it is in pursuit of a regulatory goal that is consistent with the Constitution of this country which requires that the exercise of the policy power be reasonably related to the goal of the exercise. So far he is not aware of a regulatory reason that's been brought forth. We don't know of any reason that would make card room regulation or Bingo regulation more difficult if there was an overlap of mere ownership. Operation issues may be different, but to say there is something inherently offensive in terms of a regulatory purpose about the ownership of two different types of regulated gambling activities hasn't been made part of this record. He asked the Commission to re-examine that fundamental premise. There may be reasons that would support some restriction, but whether it's the absolute ban, it's difficult to see that, so far. Secondly, this only affects those very few licensees that are finding their Bingo operation in decline. Any Bingo that owns space or has a long-term lease for more space that it can use will be negatively impacted. There may be a very few that might have been able to possibly salvage some income stream before this rule came on the horizon. Some of them will still be able to; they'll just have to go through very elaborate legal fictions to separate themselves. In the case of Cascades, they simply won't be able to do that because their jurisdiction, the city of Shoreline, has a moratorium on additional card rooms. They may be able to keep a prior application by this organization in place. They may be able to salvage an opportunity, but if the charity can't be connected to it, then any vested rights or argument that they had would go away.

Mr. Tull said that if the Commission after deliberation determines they have to restrict co-ownership, then he believed that it would be fair. However, he didn't think it would be out of keeping with past rulemaking situations to allow the only group that has applied to be grandfathered in order to allow them to proceed. Whether or not they are successful in financing the improvements, whether or not they're successful in all the other operational details under control remains to be seen. Mr. Tull didn't think anyone on the Commission had any intention of having a punitive effect or an unnecessarily harmful effect on any licensee. In this situation, he urged that the Commission revisit the question of what is its regulatory goal here; secondly, if it determines that it is satisfied with that exercise, then is there a reason why there couldn't be a grandfather status for this one application because of their unique circumstances? Finally, there was a question about the selling of pull-tabs into a card room where the pull-tab seller is the charity that happens to be the landlord. The phrases – management, and operation, and ownership – are obviously intended to have different meanings. They do have different meanings and depending upon the way things happen in the real world, it may be difficult to decide when someone is or is not taking any part in the operation of a commercial gambling activity. What is the commercial gambling activity? Is it merely the dealing of the cards? Or is it the creation of the atmosphere and the opportunity for the dealing of the cards? Does it include shared janitorial service with the charity? Mr. Tull advised he was just beginning to think through those types of issues, he urged the Commission to proceed with great caution.

Mr. Tull believed deferring this for some further study, (another month or two) to explore the possibility of grandfathering was a way of preventing unintended harm for the one particular organization that's struggling and looking further at these interrelationship issues. Some people will be able to overcome this simply by creating parallel or shadow organizations -- nothing suggests they couldn't have overlapping boards of directors. There may be tax implications in different directions, but in the end, the people who really think their charity location could work as a card room are either going to be allowed to have the opportunity, or they're going to have to go through very expensive gyrations. Until that regulatory purpose has been articulated, they ought to find another way.

Commissioner Ludwig suggested that delaying a decision for one or two months also delays his client and keeps them in limbo. **Mr. Tull** said they would rather have a further opportunity to find some type of solution than be forced to start considering whether or not this is the type of rulemaking exercise that they could even consider pursuing. If there were ways to find solutions through grandfathering or reworking, they'd like to pursue those and have engaged him to help on their behalf.

Commissioner Ludwig said Mr. Tull had commented that any rule should have regulatory purpose, but he questioned the policy issue. Isn't that a permissible basis for a rule, to avoid setting a statewide policy in an area that some of the Commissioners believe may at least cast an appearance of expanding gambling? **Mr. Tull** respectfully disagreed, he believed the policy and the regulatory purpose formulation are one and the same and he did not see in our statute a recital that says a particular charity can be next to a card room, but can't have a one percent ownership share or a 50 percent. He believed the policy issues have to be driven by regulatory issues. The Commission in the past several years has been very careful to always make sure there is a regulatory purpose. What is the policy of that regulatory purpose, he would submit in this case, the regulatory and policy purpose questions are inseparable.

Chair McLaughlin asked Mr. Ackerman if he agreed with Mr. Tull's position. **Mr. Ackerman** said he agreed with Mr. Tull to the extent that it is the Commission's duty and there is no limitation upon its authority insofar as its job is to interpret statutes, and that it is charged with enforcing and administering. He asked that the Commissioners bear in mind that one of the reasons the director and staff needs direction is because RCW 9.46.120 imposes a prohibition absent the Commission's choosing to override that general prohibition. Mr. Ackerman advised that he has always viewed this in the context of this Commission interpreting 9.46.120 with regard to the specific type of fact situation that has confronted them by this application and the potential for future applications. At least in his reading of that chapter, the Legislature didn't contemplate that those two things would cross over or meet, so this rule has been presented to the Commission, to ask this Commission to interpret Chapter 9.46 through the potential promulgation of a rule. He expressed no opinion as to what the outcome should be, but he believed that it is not only within this Commission's power, but they are expected to interpret the chapter that the Legislature has passed and committed to the Commission's care, and that's the authority for doing this.

Nick Peck, Administrative Director, Silver Buckle Rodeo Club, a licensed nonprofit operating Bingo, addressed the Commission as an individual and not on behalf of the association. His comments are disinterested because the issue does not arise in his community where card rooms are prohibited in any event. He stated he would like to claim that he is very neutral on this issue. Equally, he was sensitive to the wide policy issues that have been raised by Senator Prentice and by individual Commissioners. He addressed the implied secondary effects of the wording (on the green amendment) as it currently stands. Every time this issue is revisited, it appears to be more confusing. If he understood the current wording, it would appear that if card rooms were licensed in his community, if he were to surrender his Bingo license, he could then apply for a card room license. He asked if this was the intent of the Commission, that this should be achievable? As a board member of another nonprofit in no way connected with Bingo, is it fair, is it equitable that in one capacity, one can apply for a card room license in a community if they will allow it, but because another operates Bingo, they're not allowed to? As the manager and custodian on behalf of the Board of Directors of the funds of the Silver Buckle Radio Club, he asked if he has the right, without regulation, to invest those funds in any legitimate enterprise within or out of the state, if that is in the best interests of his corporation. If so, is that right in any way limited by the proposed wording, separating out very firmly the concepts of management, operation, and ownership? Mr. Peck asked if all these side effects are those intended by what the Commission propose with this rule?

Chair McLaughlin referred to Director Bishop's comments that the Commission doesn't have any jurisdiction over any nonprofit that doesn't have a license at this time. **Director Bishop** affirmed and noted that the particular statute the policy issue is based upon relates to other licensed activities. In theory, it could apply to one organization owning more than one card room -- it says, "without the Commission's approval, no licensee shall be involved in the operation, management, or ownership of another organization conducting gambling activities." **Mr. Ackerman** concurred. He emphasized this concept isn't something that's been made up by either the director or the staff. The language before them in the proposed WAC is very close to what's in the statute. It's already the law that they can't do this absent the Commission's approval. The real issue is whether the Commission is going to deal with each one of these applications on a case-by-case basis; or at least with regard to charitable nonprofits, does the Commission have a view regarding this issue, and are they going to provide that direction to the director and staff? Mr. Ackerman noted the WAC comes very close to parroting the statute except that it deals with just the charitable nonprofit issue.

Chair McLaughlin asked if for any additional testimony, no one came forward, and she closed the public testimony.

Commission Parker made a motion, seconded by Commissioner Ludwig to approve the amended (green) version of the proposed rule, WAC 230-04-026. **Director Bishop** asked if the motion would include that it would become effective 31 days from filing. **Commissioner Parker** and **Commissioner Ludwig** concurred. Commissioner Ludwig pointed out that prior to discussion, staff recommended adoption and he asked if staff still supported that recommendation. **Director Bishop** responded this rule precludes staff from being in an unclear situation. If it does not go forward, he would have little choice but to bring the application before the Commissioners. He has no other means of denying it, and he believed it would be unfair to the licensee, at that point in time, to go through the whole process, come before the Commission, and then have it denied. *Vote taken; motion carried with four aye votes. Commissioner Forrest voted nay.*

8. **New Marketing Schemes for Pull-tabs**
WAC 230-30-033; WAC 230-30-036

Sherri Winslow reported that the new market opportunities for pull-tabs include the hold and strip ticket pull-tab series, which are a part of the rules that came out of the task force.

WAC 230-30-033 – The hold ticket series is a game with a predetermined number of pull-tabs allowing a player an opportunity to advance to another round with a secondary element of chance. It also includes instant winners. In the second element of chance, there can be two different methods of play. One method is tied to the Bingo game and the second is tied to a bonus number on the flare. All other requirements of the hold series are similar to other pull-tab rules. A change was made since the last month meeting to add titles to the sections for clarity. She also noted that they received a comment yesterday that there may be a conflict with the title of this rule which includes the term “hold” with other rules that are in the agency WAC rules manual. Staff will be taking a look at that in the interim before the next meeting.

WAC 230-30-036 – The strip ticket pull-tab series is a series of pull-tabs sold in strips. There are generally between two and five series combined on one flare to make up a set. All other strip ticket requirements outlined in the rule fall in line with the general pull-tab rule requirements. Since the last meeting, there was a minor change in subsection 4C to add the word “strip” right before the word “pull-tabs”, so that it was clear what the maximum price was for.

Chair McLaughlin called for Commission comments. There were none and she opened the public testimony.

Don Kaufman, Big Brothers Big Sisters, Spokane testified on WAC 230-20-036. He acknowledged the word “strip” was added with the price tag of a dollar. He reminded the Commission that pull-tabs sell for a dollar each in this state. This rule would relegate the nonprofits to only 20-cent pull-tabs in this format. He suggested getting rid of the word “strip” or changing the price to \$5.00. Item (D) indicates that each pull-tab shall have the same cost. In a strip format, that would be the same as bundling them. They can bundle them in \$5.00 increments or \$10.00 -- this becomes a bundled tab in a strip and ought to be \$1.00 each per tab. Mr. Kaufman said the point is that you can buy a single tab in this state for a dollar today. If you’re hooking them together five at a time, why shouldn’t they be able to sell a strip for \$5.00? **Commissioner Forrest** asked if staff has explored this. **Ms. Winslow** said staff felt that the price per strip ticket was a policy issue and staff felt uncomfortable making a change to the ticket price with the proposal. They suggested that if the licensees wanted to come forward and make that change that they should do so at the time of filing. Commissioner Forrest asked if it was permissible. Ms. Winslow said staff could regulate it, but the price of the strip ticket is a policy issue for the Commission. **Chair McLaughlin** asked if the RCW defines that pull-tabs must be a dollar or under. **Director Bishop** said it is an interpretation of the law. **Mr. Fleisher** said the question really is the interpretation of the law wherein the Legislature said the operation of punch boards and pull-tabs are subject to the following condition. Condition (b) states the price of a single chance may not exceed \$1.00. Was it the Legislature’s intent that in order to enter a game of pull-tabs a person should not be required to pay more

than a maximum of \$1 to enter the game? Or is the interpretation implied that as long as you have more than one chance, if it was more than \$1, it was okay? The question is what is the minimum price you have to pay to play this particular series of pull-tabs. **Director Bishop** explained that the question is; when one buys the strip, are they are buying five chances or buying one chance? If it's chances, it's a little cloudy. If we say tickets, it becomes a lot clearer. Director Bishop believed it's clearer that one strip is a ticket. **Commissioner Forrest** asked what would happen if he bought five tickets and gave five people a separate ticket – are they physically attached? **Director Bishop** said his concern is that the Commission should not approve \$5 pull-tabs without making a conscious decision. **Commissioner Forrest** asked if the five tickets are a unit, or are they considered five tickets, and are we saying a person can only buy five tickets.

Mr. Kaufman responded that an individual could only buy one strip at a time. He explained there are five different sets hooked together, with five different series of numbers, five different games in one strip. You could snip them in half; there should be a different series number on each one. That means each one is an individual tab, which means each tab in this state can be sold for \$1 – that's state law. What we're saying is, you're going to limit this type of sale to more than a 20-cent tab. He asked for the same opportunity, to sell \$1 tabs, hooked together five ways, as he gets to bundle them currently. The only way you can play this set is to buy them in \$5 or \$10 bundles. "We've pre-bundled them, we've hooked them together with a rubber band, and that's the way we're going to sell this particular set." **Commissioner Forrest** clarified that Mr. Kaufman's requested change in the rule would mean that if someone only had a dollar, and came into his establishment, he would say we don't deal in \$1 tickets; we deal in tickets that are worth a dollar but only if you buy a five dollar set. Mr. Kaufman responded in the affirmative.

Chair McLaughlin asked Mr. Kaufman if he sold 25 cent pull-tabs, to which **Mr. Kaufman** responded affirmatively, however, he explained if this rule passes, he could only sell that strip for a dollar. At 25 cents each, five of them are \$1.25, so they have just eliminated his ability to sell a 25-cent tab if this rule is passed as written. **Chair McLaughlin** asked where the rule came from. Mr. Kaufman said the Net Return Task Force recommended them. **Commissioner Forrest** said it seemed to be ridiculous if he goes up to the counter and has \$5, that he can't say he wants five tickets at once instead of five tickets one at a time. A ticket to him is what "I" win with, and the fact that he buys a bunch of them together isn't necessarily an issue. He couldn't see any huge public policy – who are we protecting from what – he believed Mr. Kaufman was right.

Chuck Bay, with Jader's, asked if he was right in assuming that when one buys this strip, if it's five games, the whole strip costs one dollar. **Ms. Cass-Healy** affirmed. Mr. Bay verified five games with five stamps. Ms. Cass-Healy affirmed. Mr. Bay asked if it was a strip, how would the monthly reporting be facilitated? Ms. Cass-Healy responded that staff is reviewing that issue right now.

Julie Porter, WGC, said she understands the gray area the Commission is in, whether or not this is a dollar tab or a five-dollar tab. However, looking at it from a business standpoint, she said it's pretty much worthless to pass this rule at just a dollar. The cost of the game is prohibitive for any operation to run it with a 20-cent rate on it. She recommended either changing it to five dollars, or just doing away with it because it wouldn't be worthwhile.

Director Bishop disagreed. **Ms. Cass-Healy** confirmed this is similar to the discussion held at the Task Force Meeting and it was decided these were policy issues that only the Commission could make.

Don Kaufman, noted that when this rule came out of the Nonprofit Net Return Task Force it did not have the word "strip" in it. That was inserted at the Commission's filing last month. It was passed with the understanding that we could sell these up to \$1 per tab. They would have a maximum price and be in a strip format, which would equate to \$5 – that was the way it was passed by the Net Return Task Force group. **Commissioner Forrest** recommended taking the word "strip" out. Mr. Kaufman said if the Commission feels it needs a strip price, \$5 should be used in place of \$1. If the Commission feels it needs a per tab price, then take the word "strip" out. Commissioner Forrest thought it would be easier to leave it in and put \$5 down. Mr. Kaufman concurred.

Commissioner Ludwig noted that if the word "strip" is removed, it is one pull-tab. **Mr. Kaufman** said it has a different series number on each one. Commissioner Ludwig said he views this as a strip pull-tab because it fits the

definition at the top with a series of up to five pull-tabs. Mr. Kaufman said that he should then put \$5 in place of \$1.

Commissioner Ludwig made a motion seconded by Commissioner Forrest to amend this by changing Item 4C from \$1 to \$5.

Chair McLaughlin said there's been a motion and a second to amend WAC 230-30-036 to add a monetary amount. It's not a restriction. **Director Bishop** said he assumed it's not a pull-tab because we can't sell that for more than \$1. **Commissioner Ludwig** volunteered to change the amendment -- the maximum price for a strip pull-tab series is \$5, which fits the definition because a series is defined as two, three, four, or five individual pull-tabs. **Unidentified voice**: "Could we offer that if you left 4C as it's worded, and added after the \$1 statement "per series". That would get away from a three pull-tab series being sold for \$5?" Commissioner Ludwig said again, that's solved by maximum prices. They can sell it for \$2, \$3 or \$4 but the maximum is \$5, which is a \$1 maximum for five. **Ms. Cass-Healy** said staff's concern is that they might have three series on one strip and sell for \$5 which would be more than a dollar per pull-tab.

Chair McLaughlin clarified that all we're doing is making a motion to have the staff work on this issue for another month before the Commission votes on it. Commissioner Ludwig rephrased the motion and moved to amend Item 4C to read "the maximum price per strip pull-tab series is \$1 per pull-tab." He explained that it fits the definition and means that if it's a two-strip series it's \$2 and so on up to \$5.

Mr. Kaufman said he agreed as long as each individual tab with a series number on it is a tab itself. Commissioner Ludwig said according to the definition, it is, at the top of the page. **Mr. Kaufman** said they could put parentheses after that sentence -- (two tabs maximum \$2; three tabs, maximum \$3;) and so on, if they want to be real explicit. It would put a maximum value on each level of series. **Commissioner Ludwig** said it's there if each pull-tab in that series is a dollar; if it's a two-tab series, it's \$2. Mr. Kaufman agreed, he just wanted to make sure staff is interpreting each one as a tab.

Commissioner Ludwig said that up at the top of the definitions, in the first line, he would move to delete the last word "series" and change it to "defined as two, three, four or five individual pull-tabs" because you're not combining a series.

Director Bishop believed we could have some real problems. When first suggested, it was fairly simple, we were putting five games on one pull-tab. We wouldn't have to look at the manufacturing standards or anything else. Now, if we're going to make this a dollar per pull-tab, and the strip combines those games, there might be some problems with the manufacturing standards. We may need to review them, and he asked if staff could take it under advisement and report back. It is understood that the issue is that charities want to sell these for \$5 a piece and that is a policy issue. **Commissioner Ludwig** commented that if a pull-tab series is defined as five individual pull-tab series, that's incorrect. Director Bishop advised there would be some real problems going back and working through the standards rule. **Mr. Ackerman** pointed out that in Item 4A and B we talk in terms of "tickets" -- a maximum ticket count of 10,000. He assumed that meant the maximum number of pull-tabs, not the maximum number of strips. Legally he would prefer consistency in our terms, and suggested we talk about either pull-tabs, or series or strips, and not inject this new word "tickets" because it doesn't refer to anything. **Chair McLaughlin** asked if a motion was required. **Mr. Ackerman** said a motion was not necessary if the issue is going to back staff for consideration. **Chair McLaughlin** closed the public hearing.

9. House Rules for Bingo:

WAC 230-20-010

Amy Patjens advised this item was up for discussion only. Last month staff had a situation where a couple of Bingo operators would not pay a Bingo on a particular game if the person had marked through the number. Examples were included in the Commissioners' packet to show what situations had occurred. In these instances, staff felt that according to house rules, the house rule had indeed been violated, but believed that if one could still clearly tell that

it was valid Bingo, it should be paid. The proposed rule simply clarifies that if a Bingo is valid, the operator must pay the prize for the games, and disputes will be resolved in favor of the player, if the Bingo is valid. Staff recommends further discussion.

Chair McLaughlin opened the issue for public comments, there was none. The public hearing was closed and she announced the item would be up for final action next month.

Rules Up For Discussion and Possible Filing

10. **Petition for Rule Change by Kegler's Choice Regarding Poker Cards:** (Item Withdrawn from the Agenda)
WAC 230-40-070 – Licensees to furnish all cards, chips, and other services.

11. **Petition for Rule Change by Lee Taylor Regarding Player-Supported Jackpots**
WAC 230-40-610 – Player-supported jackpots-Restrictions-Manner of Conducting-Approval.
Ms. Patjens first contacted Mr. Taylor by telephone and let him know that he was on a speakerphone. **Mr. Taylor** responded that he understood.

Mr. Patjens proceeded to describe the petition for the Commissioners. She said Item 11 is a petition that was filed by Mr. Taylor. Any member of the public can submit a petition for rule change and Mr. Taylor had contacted the Commission staff several months ago when a card room in Bellingham had closed. He had put money into a player-supported jackpot and he was concerned about the players receiving the funds back. He submitted a petition in July, which the Commission denied. Mr. Taylor contacted staff because he felt that perhaps staff had misunderstood his petition. His goal was not to make tracking complicated; he just wanted to ensure that players who put money into a player-supported jackpot, would get those funds back if the operator chose not to have a PSJ anymore.

Ms Patjens noted that under the current rules for player-supported jackpots, there are two ways money is distributed if a card room closes. One is that it could go to the Council on Problem Gambling, or the alternative is that the licensee could get approval from the director to revise their prize contests so that the funds would be distributed. Under the current petition, Mr. Taylor has patterned his petition on how funds are distributed for house-banked progressive jackpots, which are a different type of contest. With house-banked progressive jackpots, if an operator is going to stop offering that, they have to notify the players ten days in advance. Mr. Taylor is proposing this be the same for player-supported jackpots. Ms. Patjens called attention to the memo in the Commission packet explaining the three different options for this petition; 1) to go ahead and initiate rule-making; 2) to propose an alternative rule; or 3) to deny the petition in writing, stating the reasons for denial.

Ms. Patjens explained that staff is recommending that the Commission initiate rule making. Staff would like the opportunity to continue to work with Mr. Taylor in the next month or so, because they still have some concerns about the exact language that's been used. Oftentimes the reason a house would stop operating a player-supported jackpot is because they plan on closing their doors. Right now the rule says they would have to give a 10-day notice. Ms. Patjens offered consideration that if a card room closes, they could agree the first option would be that they want the money to go back to the players. If there were some odd circumstances, (such as the building burning down) and the business was closed, staff didn't want to end up being responsible for getting these funds distributed. They would still like to have a last resort option that the money could possibly go to the Council on Problem Gambling. Ms. Patjens said staff would like to file the proposed rule, and if they were able to come up with a different option with Mr. Taylor, they would probably just agree jointly that staff would bring forth a new rule, without requiring Mr. Taylor to file a new petition.

Mr. Taylor responded that he is looking at the two options, and while the essence is primarily the same, the wording is different. If he were to file, he would probably re-write the initial petition to incorporate the language of the draft that had been sent out with a couple of additions regarding the closure of a Poker room and the expense involved in

the distribution of the player-supported jackpots. If a casino were to decide to charge players to participate in a tournament, he would like to see that option eliminated. He didn't believe they have that option available to them in any legitimate sense, and they should provide the distribution of the prize moneys for moneys that belong to the players. The player shouldn't have to pay to compete in a drawing, or whatever other method the Commission decides on. The second possible addition would deal with the eventuality if they were to have a tournament or a drawing, that these would be in kind. In other words, for instance, Texas Hold 'Em players would not be able to be involved with the money that some card stud jackpots have because they have two separate jackpots for each game. That would not necessarily eliminate anyone who hasn't played either one from participating, because for the same reason, someone could walk into a card room and win the jackpot without having played before.

Commissioner Ludwig said he understands Mr. Taylor is suggesting a rewrite of his petition. If he is correct, **Commissioner Ludwig** made a motion that the Commission take no action at this time until they receive whatever Mr. Taylor is proposing. **Chair McLaughlin** asked if a motion is necessary if they choose not to take any action until Mr. Taylor rewrites his petition. **Commissioner Forrest** thought it would be better if they make a motion that Mr. Taylor resubmit his petition with a detailed statement of the rule. **Mr. Ackerman** concurred.

Commissioner Ludwig made a motion seconded by **Commissioner Forrest** that the Commission takes no action in view of Mr. Taylor's comments, until the Commission receives in writing what Mr. Taylor has proposed. **Mr. Taylor** concurred. *Vote take; motion carried with five aye votes.*

12. Other Business/General Discussion/ Comments from the Public

Chair McLaughlin called for any other comments or business item from the public. There were none.

13. Adjournment:

With no further business, a motion for adjournment prevailed at 1:30 a.m.

Minutes submitted to the Commission for approval

Shirley A. Corbett
Executive Assistant